IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 299 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

SAYAJI INDUSTRIES LTD.

Appearance:

1. INCOME TAX APPLICATION No. 299 of 1999
MR MANISH R BHATT for Petitioner No. 1
RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 07/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

The revenue has proposed the following question

and requested this Court to direct the Income-tax Appellate Tribunal to draw a statement of case and refer the same question for the opinion of this Court :-

"whether, the Appellate Tribunal is right in law and on facts in holding that the amount of Rs.10,50,000/- paid to consultant in connection with establishment of plant was an allowable business expenditure ?"

2. Heard Mr Manish Bhatt, the learned senior standing counsel appearing for the applicant-revenue. Though Rule was duly served on the respondent-assessee, nobody appears on behalf of the assessee. Mr Bhatt has submitted that the question proposed by the revenue is a question of law and the Tribunal should be directed to refer the same question to this Court for its opinion. In support of this contention, he has relied on the decision of this Court in the case of CIT vs. Ambica Mills Ltd., (1999) 236 ITR 921 wherein this Court has taken a view that the expenditure was incurred by the assessee for getting a feasibility report for setting up a new mini steel plant which project did not materialize. The mini steel plant which the assessee wanted to put up was quite different from its existing business of manufacturing steel tubes. The expenditure incurred for getting the feasibility report was, therefore, capital expenditure.

3. We have considered the above decision and facts of the present case. In the case before us, there was a categorical finding given by the Tribunal that it was an expansion of the existing business and the project in question could not be taken up because of the Government policy on pricing of the final product which was not economically feasible. It was further observed by the Tribunal that the letter of intent was revoked by the Government and in these circumstances, the amount paid to the consultant could not be recovered by the assessee from the said consultant. After recording this factual finding, the Tribunal has observed that no enduring benefit resulted to the assessee and hence, the expenditure incurred by the assessee could not be considered as capital expenditure. The Tribunal has further come to the conclusion that the expenditure incurred by the assessee has resulted in a loss to the assessee as the amount of Rs. 10,50,000/- paid by the assessee to the consultant was an infructuous expenditure resulting in a business loss.

In view of the above fact, we are of the view

that the decision relied by the revenue is not applicable to the facts of the present case and hence, is distinguishable on facts.

4. In view of the above facts and circumstances of the case, we are of the view that no question of law arises from the order of the Tribunal and hence, we reject this application.

Rule is discharged with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-